

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THOMAS ALLEN CLARK,

Petitioner,

V.

ALICE PAYNE,

RESPONDENT.

Case No. C06-5015RJB

ORDER ON REPORT AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of Magistrate Judge Karen L. Strombom (Dkt. 27) and the petitioner's objections thereto (Dkt. 28). The Court has reviewed the Report and Recommendations, the petitioner's objections, and the file herein.

I. BACKGROUND AND DISCUSSION

Petitioner Thomas Allen Clark is in custody pursuant to convictions on two counts of child molestation, to which he pleaded guilty in Clark County in 1999. He filed a federal habeas corpus petition on January 16, 2006. The Report and Recommendation urges that the Court dismiss the action as untimely because the petition was filed after the statute of limitations cutoff under the Antiterrorism and Effective Death Penalty Act (“AEDPA”), 28 U.S.C. § 2244(d). Dkt. 27-1 at 6.

Mr. Clark objects on the grounds that *Blakely v. Washington*, 542 U.S. 296 (2004), constitutes grounds for waiving the statute of limitations under RCW 10.73.100. Dkt. 28-1 at 1. Mr. Clark’s argument is unpersuasive because it is well settled that *Blakely* does not apply retroactively and because the relevant

statute of limitations is established by AEDPA and not by RCW 10.73.090. *See, e.g., U.S. v. Cruz*, 423 F.3d 1119, 1120 (9th Cir. 2005).

II. ORDER

Therefore, it is hereby

ORDERED that the Report and Recommendation of Magistrate Judge Karen L. Strombom (Dkt. 27) is **ADOPTED**, and the petition is **DISMISSED WITH PREJUDICE**.

The Clerk of the Court is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

DATED this 5th day of September, 2006.

Robert J. Bryan
Robert J. Bryan
United States District Judge